IN THE

SUPREME COURT OF THE UNITED STATES

No. 242.

ROBERT L. MILLER and MILDRED M. MILLER,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY BRIEF.

JAMES A. GREENWOOD,
527 Hynds Building,
Cheyenne, Wyoming,
Counsel of Record for Petitioners.

R. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo. HArrison 1-3030

INDEX

Subject Index

I. Petitioners' Claims for Refund Are Not Barred by Any Statute of Limitations 1-4

II. Petitioners' Payments Made on January 15th, 1953 and January 14th, 1954 4-5

III. Petitioners' Declarations Made in Their Income Tax Returns 5-6

IV. The Government Did Not Make an Income Tax Assessment Against Petitioners for 1952 or 1953 6-7

V. Certificate of Service 8

Cases Cited

Schmidt v. Commissioner, 272 F.2d 423 4

Roseman v. United States, 323 U.S. 658 4, 5

Statutes

Internal Revenue Code of 1939, Section 322 (b) (2) (a), 1952 Ed. 2, 3, 4

Internal Revenue Code of 1954, Section 6511 A 3, 4

IN THE

SUPREME COURT OF THE UNITED STATES

No. 242.

ROBERT L. MILLER and MILDRED M. MILLER,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY BRIEF.

Petitioners' Claims for Refund Are Not Barred by Any Statute of Limitations.

Petitioners contend there is no Statute of Limitations that can operate to limit the time within which a claim for refund of money belonging to Petitioners, but in possession of the Government, may be filed when the money so held was not paid to the Government at a time when there was outstanding against Petitioners, an assessed tax debt payable by them and when Petitioners were not indebted to the Government for any income tax in any sum for either of the years in question, and not indebted to the Government for any tax of any kind when their money was deposited with the Government nor when their claims for refund were filed.

Defendant contends Sections 322 (b) (2) (a) of the Internal Revenue Code of 1939, bars Petitioners' claims for refund.

Limitations on time within which claims for refund can be filed is stated in Section (b) (1) of Section 322 of the Internal Revenue Code of 1939, as follows:

> (b) Limitation on allowance.
>
> (1) Period of limitation. Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

Section (b) (2) (a) of Section 322, 1939 Internal Revenue Code, fixes the limit of amount of credit or refund. The amount of the credit or refund shall not exceed the portion of the tax paid.

Section (b) (1) fixes the limit of time only for filing the claims for refunds and has nothing whatsoever to do with fixing the amount of a claim that can be recovered.

Section (b) (2) (a) limits the amount of any refund and has nothing whatsoever to do with determining the time within which claims may be filed.

The record shows by Stipulation, pages 20, 21, and 22, of T.R. paragraphs 5, 6, and 7, that Petitioners owed no income tax at the time their payments were made, and their claims for refunds were filed. The returns declared no Federal income tax due or owing by Petitioners to the

Government, and these declarations the Government accepted. Therefore, the provisions of Section (b) (2) (a) are not applicable for the reason no tax was then due to be paid by Petitioners. In the Opinion of the Circuit Court, Appendix A, to Petitioners' Petition, it is stated "the issue is whether the Appellee taxpayers can recover a total of $64,000.00, mistakenly paid by them as estimated Federal income tax for years when they owed no tax."

Under Section 322 (b) (1), Internal Revenue Code of 1939, Petitioners had three years from the date their income tax returns for each year in question were filed, within which to file claims for refunds of the money held by the Government, and it was therefore, wholly immaterial whether the payments made on January 15th, 1953 and January 14th, 1954, were treated as estimated tax payments or payments of tax obligations in resolving the issue before the Court, because Section (b) (1) states the time limit for filing claims for refund in the alternative,

(a) the claim may be filed either within two years after the income tax is paid

(b) or within three years of the time the income tax return is filed, whichever of such periods expires the later.

Section 6511 of the Internal Revenue Code of 1954, Section A, which amended Section (b) (1) of the Internal Code of 1939, fixing the period of limitations for filing claims within which a taxpayer is required to file a claim for refund as three years from the time the return was required to be filed, this limitation replaced the language found in Section 322 (b) (1) of the 1939 Statute by inserting the period of three years from the time the return was required to be filed instead of within three years from the time the return was filed by the taxpayer. The Government states at page 3 of its Brief, notwithstanding the

Decision in *Schmidt* v. *Commissioner*, 272 F.2d 423, is correct, Certiorari should be denied in the Miller case because it will never happen again now that the 1954 Code has changed the wording of the 1939 Code.

It is conceded by Petitioners that under the Limitations Statute, Section 6511, of the Internal Revenue Code, their claims for refund would be filed out of time, but Section 322 (b) (1) of the 1939 Internal Revenue Code is the Statute of Limitation, controlling the Petitioners' right to claim a refund. Conceding that the Petitioners' right in the case at bar, is limited by any Statute.

Petitioners' Payments Made on January 15th, 1953 and January 14th, 1954.

The Government contends these payments were made to discharge existing tax obligations due the Government in fixed, defined amounts, at the times Petitioners' checks were received by the Government.

That these payments were estimated tax payments as distinguished from payment of a tax, is established by the Stipulation of the parties, filed in the Trial Court, T.R. 20-23.

Petitioners submit that the law, as pronounced in the case of *Roseman* v. *United States*, 323 United States Reports, page 685, settles this question, that the Petitioners did not make tax payments, but did deposit money with the Government at a time when there was no outstanding income tax obligation against Petitioners, and when no income tax had been assessed or levied against Petitioners for either of the years when these payments were made. That the remittances were made to the Government in advance of any assessment of tax being made against Petitioners.

What the Government's internal record keeping processes may disclose as to how these payments were entered is not important, it does not enlarge or reduce Petitioners' statutory right to relief, provided for them under the provisions of the Statutes.

The Opinion in the Roseman Case states:

> "That money received by the Director when no assessment is then outstanding against the taxpayer, it is not to be considered as tax payments which will affect the period of time so as to start the running of the Statute of Limitations within which the taxpayer may present a claim for refunds."

The Government has asserted that the moneys retained by it constitute payments of taxes, based on an assessment that was in fact made, see Opinion of the Circuit Court, Appendix A3 to Petition for Writ. There is no proof in the record that the Government in fact made any assessment of income tax against Petitioners for the years in question.

Petitioners' Declarations Made in Their Income Tax Returns.

Petitioners' income tax returns having been filed and neither disapproved nor rejected, the Government now ignores the declarations contained in these returns, which were filed in time, and asserts Petitioners made tax payments with their January remittances. The administrative processes, provided by law, as the authority for the Collector's Office of the Internal Revenue Service to determine whether or not a taxpayer owes a tax commences with the declaration made in the income tax return. The Government now claims that the January payments were tax payments, and without Petitioners being notified by the

Government, or having any knowledge of what disposition the Government had made of the money remitted to it, claimed to have applied said money to tax payments due from Petitioners, and at the same time admitting that Petitioners owed no tax.

The Government, not until 1961, made any claim that Petitioners' remittances had been taken by it in February, 1953 and February, 1954, as payment of taxes assessed against Petitioners. That the money was applied as a payment of income tax obligations of the Petitioners for the years 1952 and 1953, when Petitioners owed no income tax obligations.

The Government Did Not Make an Income Tax Assessment Against Petitioners for 1952 or 1953.

The Government contends that its action in refusing to return Petitioners' money is based upon an assessment of income taxes against Petitioners for 1952 and 1953, and the money was used to satisfy these debts. The Petitioners claim no assessment of an income tax was ever made against them for either of the years in question.

These conflicting contentions cannot be clarified by opposing arguments, the answer is to be found in the Record, see the testimony of witnesses Ross and Cole, and Petitioners' Appendixes B and C, pages A11 and A13, of their Petition for Writ.

The Circuit Court Opinion, Appendix A4 and A5, calls the actions of the Internal Revenue Officials, as related by these witnesses, unilateral actions of the Director, made without the knowledge or acquiescence of the taxpayers.

An Appellate Court is not expected to review a finding of fact made by a Trial Court when there is conflicting

evidence on the fact question to be resolved, there being no substantial evidence in the record to sustain the contention of the Respondent Government, the only way the question can be answered is by examining evidence which will disclose that the Government has not introduced one iota of testimony to support a conclusion of law that a tax assessment was in fact made against Petitioners.

The Circuit Court took occasion to state: "we express no opinion as to the validity or propriety of the procedures followed." The Circuit Court is referring to the procedure followed by Government Internal Revenue Officials, which it claims constitute income tax assessments against Petitioners.

WHEREFORE, Petitioners respectfully submit the Decision of the Circuit Court should be reversed, that Petitioners recover their $64,000.00, now held by the Government, with legal interest, and that Petitioners be awarded their court costs necessarily incurred.

Respectfully submitted,

JAMES A. GREENWOOD,
Counsel of Record for Petitioners.

527 Hynds Building,
Cheyenne, Wyoming.

CERTIFICATE OF SERVICE.

I, James A. Greenwood, certify that service of a copy of Petitioners' Reply Brief in the above case was made by United States Mail, by depositing a true copy of such Brief in the United States Post Office at Cheyenne, Wyoming, with first-class air mail, postage pre-paid, addressed to:

The Solicitor General,
Department of Justice,
Washington 25, D. C.

Dated this day of August, 1963.

JAMES A. GREENWOOD,
Counsel of Record for Petitioners.